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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,218	02/27/2002	Boris Sebastian Heinrich Schneider	SCHNEIDER B-1 (CIP)	6200

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EXAMINER

ROSENBERG, LAURA B

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,218

Applicant(s)SCHNEIDER, BORIS SEBASTIAN
HEINRICH**Examiner**

Laura B Rosenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/415,790.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

DETAILED ACTION

1. This office action is in response to the amendment received on January 2, 2004, in which claims 1-8 were canceled and claims 9-19 were added.

Drawings

2. The drawings were received on January 2, 2004. These drawings are acceptable.

Specification

3. The disclosure is objected to because of the following informalities: the phrase "hinge fastening 8 may have an angle of inclination α as shown in Fig. 2" should be rephrased to more accurately depict the angle since the angle is not being measured from a horizontal axis, as the "angle of inclination" is usually measured from. The examiner suggests --hinge fastening 8 may have an angle of offset α from a vertical axis as shown in Fig. 2--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-12 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welborn (5,529,369). In regards to claims 9 and 17, Welborn discloses a retaining device (#26) for preventing a driver or passenger from falling out, due to centrifugal force, of a "public utility vehicle" (#10) having open sides and a roof guard (#18) having front (#20) and rear (#34) struts, the retaining device comprising a support (#52) extending approximately horizontally along and dividing the open sides of the vehicle (best seen in figure 1), a hinge (#28, 30, 32) for pivoting the support on the front strut (#20) of the vehicle, and a locking system (#40) for retaining the support to the rear strut (#34) of the vehicle. Welborn discloses the support being pivoted on the front strut and retained on the rear strut, rather than the support being pivoted on the rear strut and retained on the front strut. However, it would have been obvious to one skilled in the art at the time that the invention was made to modify the retaining device of Welborn such that it comprised a pivoting on the rear strut and a locking system on the front strut as claimed since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

In regards to claim 10, Welborn discloses an upper "bow" (formed by #46) and a lower "bow" (formed by #48) coupled to and extending spaced apart from the support (best seen in figure 2).

In regards to claim 11, Welborn discloses the hinge further comprising a hinge fastening (fastening portions of #28, 30, 32 are not labeled) arranged at an "upward

incline" (an axis of each hinge fastening is upwardly inclined with respect to a horizontal) such that the support (#26) is "automatically locked" (via #40).

In regards to claim 12, Welborn discloses the hinge projecting into the open sides of the vehicle (best seen in figure 1).

In regards to claim 14, Welborn discloses the locking system (#40) comprising a "rotary drop lock" (best seen in figures 3-7).

In regards to claim 15, Welborn discloses the retaining device preventing the driver or passenger from falling out by holding the driver or passenger at a shoulder point, a knee point, and a hip point. Specifically, based on the location of a seat (#22) in figure 1, the device would hold a driver or passenger in these three points.

In regards to claim 16, as best understood, Welburn's retaining device would be suitable for installation on any vehicle having open sides and a roof or canopy guard having front and rear struts based on a seat reference point as a point of reference.

In regards to claim 17, Welborn discloses the upper and lower bows being coupled to the front and rear struts of the vehicle via the hinge (best seen in figure 1).

In regards to claim 18, Welborn discloses the upper bow (#46) and the lower bow (#48) being secured directly to the support (#52; best seen in figure 2).

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Welborn (5,393,118) in view of Martin, Jr. (4,392,669). In regards to claim 13, Welborn does not disclose the locking system comprising a "snap bolt". Martin, Jr. teaches a retaining device (#41) for a vehicle (#10) for protecting a driver from falling out of the vehicle.

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The retaining device is retained on a strut (#31) of a roof guard (#34) by means of a locking system (#53, 54), in particular a “snap bolt” (best seen in figure 2). It would have been obvious to one skilled in the art at the time that the invention was made to modify the locking system of Welborn such that it comprised a “snap bolt” as claimed in view of the teachings of Martin, Jr. so as to provide a commercially available (Martin, Jr.: column 3, lines 41-44) and inexpensive locking system. In addition, the use of “snap bolts” is old and well known in the art; therefore, it would have been an obvious matter of design choice to use a “snap bolt” in the locking system instead of a “rotary drop lock”.

Allowable Subject Matter

7. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: the allowable subject matter in claim 19 is the upper bow extending to approximately one half of a height between the support and a roof of the vehicle.

Response to Arguments

9. In regards to applicant's arguments on pages 15-16, a feature of virtually any door on a vehicle is to retain a driver or passenger from falling out due to centrifugal force. Further, the recitation “for preventing a driver or passenger from falling out, due

to centrifugal force, of a fork-lift truck, tractor, construction machine, agricultural machine, or public utility vehicle" (independent claim 9) leads to the intended use of the retaining device and, therefore, does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The Welborn reference meets the structural limitations of the claim and is able to be used in the manner set forth in the intended use.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B Rosenberg whose telephone number is (703) 305-3135. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura B. Rosenberg

LBR

Paul N. Dickson 3/19/04
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